IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5.3.2007

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.NPD Nos.700 and 701 of 2003

G.S.Sampath
Cause Title accepted vide order
dt.10.1.2003 made in C.M.P.
Nos.70 & 71 of 2003
.. Petitioner in both C.R.Ps.

vs.

G.N.Saravanan .. Respondent in both C.R.Ps.

Revision Petitions filed against the order dated 16.4.2002 in RCA Nos.2 and 1 of 2001, on the file of the Rent Control Appellate Authority (Principal Sub Judge), Gobichettipalayam against the order dated 11.12.2000 passed in RCOP Nos.3/1993 and 2/1998, on the file of the Rent Controller (District Munsif) Gobichettipalayam, respectively.

For Petitioner : Mr.M.M.Sundresh
For Respondent : Mr.P.V.Ramachandran

COMMON ORDER

These Revision Petitions have been filed against the order dated 16.4.2002 in RCA Nos.2 and 1 of 2001, on the file of the Rent Control Appellate Authority (Principal Sub Judge), Gobichettipalayam against the order dated 11.12.2000 passed in RCOP Nos.3/1993 and 2/1998, on the file of the Rent Controller (District Munsif) Gobichettipalayam, respectively.

2.The tenant is the revision petitioner in both the above revision petitions.

3.The landlord filed RCOP No.3/1993 against the tenant under Section 10(2)(i), 10(2)(ii)(a) and 10(3)(iii) of the Tamil Nadu Buildings (Lease and Rent) Control Act, 1960, hereinafter referred to as 'the Act' for getting an order of eviction. According to the landlord, the tenant has committed wilful default for a period of 12 months (i.e.) from June 1992 to May 1993, amounting to a sum of Rs.6,000/-. The agreed rent is Rs.500/- per month. He further wanted the petition property for starting his own business. It is the further case of the landlord that the tenant is also guilty of sub-letting the property.

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4.The Rent Controller by order dated 11.12.2000 dismissed the eviction petition by holding that the landlord has failed to prove any one of the grounds raised by him in the RCOP. Aggrieved by the order of the Rent Controller, the landlord filed an appeal in RCA No.2/2001 and the appellate authority by order dated 16.4.2002 ordered eviction on the ground of wilful default alone. Hence the tenant filed C.R.P.No.700/2003.

5.While RCOP No.3/1993 was pending before the Rent controller, the landlord filed another eviction petition in RCOP No.2/1998 against the tenant under Sec.10(2)(i) of the Act by alleging that the tenant is guilty of wilful default for a period of 57 months, (i.e.) from November 1993 to July 1998.

6.The Rent Controller by order dated 11.12.2000 dismissed RCOP No.2/1998, against which the landlord filed RCA No.1/2001 and the appellate authority by order dated 16.4.2002 allowed the appeal and ordered eviction. Hence the tenant filed the other C.R.P.No.701/2003.

7.Heard the learned counsel for the tenant and the learned counsel for the landlord. I have also perused the documents filed and the judgments referred to by them in support of their submissions.

8.Learned counsel for the tenant submitted that the appellate authority has wrongly shifted the burden on the tenant to prove that he has not committed wilful default and the appellate authority has not come to the correct conclusion on the basis of the evidence let in before the Rent Controller.

9.Per contra, the learned counsel for the landlord submitted that the appellate authority has correctly evaluated the evidence adduced and the same need not be interfered with by this court under Sec.25 of the Act.

10.I have considered the rival submissions carefully. A number of judgments were relied on by both the learned counsel and I wish to refer to them as and when it is necessary. After all, the question of wilful default is not a pure issue of law and the same has to be considered in the background of the facts and circumstances of each case. Any decision rendered by the Supreme court and the High Courts is to be considered in the light of the facts of a particular case and such decision cannot be applied straight away to any other case without considering the facts of that particular case.

11.In the case on hand, the only question that arises for consideration is whether the tenant committed wilful default for a period of 12 months, (i.e.) from June 1992 to May 1993 as contended by the landlord in RCOP No.3/1993 and whether he is guilty of wilful default for a period of 57 months, (i.e.) from November 1993 to July 1998 as alleged by the landlord in RCOP No.2/1998.

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12.To decide the above issue, it is useful to refer to Sec.10(2)(i) of the Act which reads as under:

> "10.Eviction of tenants-
>
> (2)A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied-
>
> (i)that the tenant has not paid or tendered the rent due by him in respect of the building, within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable.
>
> Provided that in any case falling under clause (i) if the Controller is satisfied that the tenant's default to pay or tender rent was not wilful, he may, notwithstanding anything contained in Section 11, give the tenant a reasonable time, not exceeding fifteen days, to pay or tender the rent due by him to the landlord up to the date of such payment or tender and on such payment or tender, the application shall be rejected.
>
> Explanation:- For the purpose of this sub-section, default to pay or tender rent shall be construed as wilful, if the default by the tenant in the payment or tender of rent continues after the issue of two months' notice by the landlord claiming the rent."

13.In 1985(1) SCC 591 (Sundaram Pillai v. Pattabiraman), the Hon'ble Supreme court defined the words 'wilful default' by indicating that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom.

14.The Supreme Court further interpreted the explanation portion to Sec.10(2) by holding that where no notice as required by the explanation is given to the tenant, the controller or the court can certainly examine the question whether the default has been wilful and to such a case the explanation would have no application. Where the landlord chooses to issue 2 months' notice and the rent is not paid then that would be a conclusive proof of the default being wilful unless the tenant proves his incapability of paying the rent due to unavoidable circumstances.

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15.In 2003(10) SCC 610 (P.M.Punnoose v. K.M.Munneruddin), the Hon'ble Supreme Court held that after the issuance of 2 months' notice claiming the rent, the default by the tenant shall be construed as wilful raising a presumption in that regard and it will be for the tenant to show availability of sufficient cause or circumstances beyond his control to escape from the consequences of default. The Supreme Court further held that the landlord is not prevented from initiating proceedings for eviction on the ground of wilful default under Sec.10(2)(i) of the Act, without serving a notice under the Explanation but in that case it will be for the landlord to make out a case of wilful default by tenant failing which the Controller may exercise his discretion under the provision giving the tenant a reasonable time, not exceeding 15 days for payment or tender.

16.In 2000(1)CTC 239 (AIR 2003 S.C. 2993) (P.M.Punnoose v. K.M.Munneruddin), the Hon'ble Supreme court held that from a combined reading of clause (i) of Sub-section(2), the proviso and the Explanation, it is manifest that it is only when the Rent Controller is satisfied that a tenant's default to pay or tender the rent is wilful then he can order eviction of the tenant. The question of wilful default to pay or tender rent to a landlord by a tenant is a mixed question of law and fact and where the findings recorded by the appellate authority are illegal, erroneous or perverse, the High Court, having regard to the ambit of its revisional jurisdiction under Sec.25 of the Act, will be well within its jurisdiction in reversing the findings impugned before it and recording its own findings.

17.In 2005(4)M.L.J. 222 (M/s.K.A.M.A.A.K.Nataraja Nadar and Sons, Vadasery v. R.Kannan), this court held that the landlord is not prevented from initiating proceedings on the ground of wilful default under Sec.10 (2)(i) of the Act without serving notice and in that case, no presumption will come and it is for the landlord to make out a case of wilful default.

18.In the light of the legal principles as culled out from the above decisions, now let me consider the facts of the present case.

19.It is an admitted position that both the eviction petitions were filed by the landlord against the tenant raising the ground of wilful default in payment of rent without issuing notice. It is no doubt true that the landlord is entitled to file an eviction petition under Sec.10(2) (i)of the Act, but it is for the landlord to make out a case of wilful default, (i.e.) the onus is on the shoulders of the landlord to prove that the tenant is guilty of wilful default to get an order of eviction.

20.The Rent Controller observed that it is the landlord who refused to receive the rent when it was paid by the tenant in March 1993 for the month February 1993 by placing reliance on Exs.P3 and P4. Ex.P3 is the lawyer's notice dated 28.2.1991 sent by the tenant to the landlord calling upon the landlord to specify a bank in which the tenant can pay the

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monthly rent of Rs.500/- as the landlord refused to receive the rent sent by Money Order on 7.2.1991. Ex.P4 is another lawyer's notice dated 8.2.1992 sent by the tenant to the landlord calling upon the landlord to intimate his bank account in which the rent may be deposited by her. This notice dated 8.2.1992 referred to the earlier notice dated 28.2.1991 and the fact of the landlord coming forward to receive the rent after the receipt of the notice dated 28.2.1991. In the 2nd notice dated 8.2.92, the tenant informed the landlord that he did not give receipts for the rents paid by her for the months of August 1991 to November 1991. This notice dated 8.2.1992 also referred to the fact of refusal by the landlord to receive the rent for the subsequent months.

21.The landlord admitted that he received Exs.P3 and P4, but he did not send any reply refuting the facts contained in the notices. The Rent Controller has also noted the fact that after filing the eviction petition, the arrears of rent were deposited by the tenant in court and Thereafter the rent was being paid to the landlord directly thereafter one Nazirkhan. Considering the totality of the circumstances, the Rent controller came to the conclusion that the landlord has not proved that the tenant has committed a wilful default in the payment of rent. The fact of paying the subsequent rent directly to the landlord through the said Nazirkhan was also proved by the tenant by examining the said Nazirkhan as R.W.2.

22.But the appellate authority has straight away proceeded on the presumption that it is the tenant who has to prove that she has not committed wilful default and on that presumption, the appellate authority re-appreciated the evidence and came to the conclusion that the tenant has failed to prove that she has not committed wilful default and therefore ordered eviction on the ground of wilful default alone.

23.The basis on which the appellate authority proceeded is obviously wrong as it is a case of the landlord filing an eviction petition under Sec.10(2)(i) of the Act without issuing a notice to the tenant and in such circumstances, the onus is on the landlord to prove that the tenant has committed wilful default. Because of the wrong presumption of law, the appellate authority has arrived at a wrong conclusion on the basis of the evidence adduced before the Rent Controller. When the findings of the appellate authority are erroneous and illegal, this court can certainly interfere with those findings under Sec.25 of the Act. Further when the Rent controller has correctly presumed, proceeded and rendered a finding on the basis of the evidence let in by the parties which is reasonable, plausible and in accordance with law, the same should be upheld by this court, especially when the appellate authority has wrongly proceeded on the presumption that the tenant has to disprove the case of the landlord. Hence the findings of the appellate authority in RCA No.2/2001 are unsustainable and are liable to be set aside, by restoring the order of the Rent controller in RCOP No.3/1993.

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24.In the result, C.R.P.NPD.No.700/2003 is allowed. No costs. C.M.P.No.7514/2003 and 8638/2006 are closed.

25.RCOP No.2/1998 was filed by the landlord against the tenant under Sec.10(2)(i) of the Act alleging wilful default for a period of 57 months from November 1993 to July 1998.

26.In this petition also, after considering the totality of the circumstances namely, refusal of the landlord to receive the rent, sending two notices by the tenant, receiving the notices and not replying, deposit of the arrears by the tenant in court and subsequent payment of rents directly to the landlord by the tenant through one Nazirkhan, the Rent controller concluded that the landlord has failed to prove that the tenant has committed a wilful default in the payment of rent as the landlord failed to discharge the onus of proving the wilful default, when the eviction petition has been filed without sending a notice to the tenant. Further the Rent Controller found fault with the landlord for first saying that he did not even know who is Mr.Nazirkhan, but later on admitting that negotiations were held between the landlord and the tenant through the said Nazirkhan.

27.In this appeal also, the appellate authority shifted the onus from the landlord to the tenant and after re-appreciation of the entire evidence concluded that the tenant has failed to discharge his duty of disproving the fact that he has not committed wilful default. This is an erroneous finding and the same is unsustainable.

28.In conclusion, all the reasons given by me for allowing CRP NPD.No.700/2003 will apply to this Revision Petition also.

29.Hence CRP NPD No.701/2003 is also allowed. No costs. C.M.P.No.7515/2003 and 8639/2006 are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sks

To

1. The Rent Controller Appellate Authority,
(Principal Subordinate Judge)
Gobichettipalayam
(with records)

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2. The Rent Controller
(District Munsif Court)
Gobichettipalayam

3. The Record Keeper,
V.R.Section,High Court, Madras.

2 cc To Mr.M.M.Sundresh, Advocate, SR.13607, 13608.
2 cc To Mr.P.V.Ramachandran, Advocate, SR.13603, 13604.

C.R.P.NPD.700 & 701/03.

AKM(CO)
RVL 28.03.2007

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